

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
JULY 19, 2006**

CALL TO ORDER	A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Charles Lapp, Randy Toavs, Gordon Cross, Don Hines, Gene Dziza, Kim Fleming and Kathy Robertson. Jeff Larsen and Frank DeKort had excused absences. Rebecca Shaw and Kirsten Holland represented the Flathead County Planning & Zoning Office. There were approximately 45 people in the audience.
PUBLIC REVIEW	Gene Dziza reviewed the public hearing process.
APPROVAL OF MINUTES	Cross made a motion seconded by Lapp to approve the June 14, 2006 meeting minutes. The motion was carried by quorum.
PUBLIC COMMENT <i>(not related to agenda items)</i>	None.
ZONE CHANGE/ SEMITOOL (FZC 06-13)	A Zone Change request in the Evergreen and Vicinity Zoning District by Semitool, Inc., from SAG-10 (Suburban Agricultural) to I-1 (Light Industrial). The property is located at 655 West Reserve Drive, and contains 30.2 acres.
STAFF REPORT	Kirsten Holland reviewed Staff Report FZC 06-13 for the Board.
APPLICANT	Rich DeJana, attorney for the applicant, stated he did not have a presentation, that the Planning Staff had done a great job.
AGENCIES	None present.
PUBLIC COMMENT	None.
STAFF REBUTTAL	None.
APPLICANT REBUTTAL	None.

MAIN MOTION	Robertson made a motion seconded by Hines to adopt Staff Report FZC 06-13 as findings of fact and recommended approval to the Board of County Commissioners.
BOARD DISCUSSION	None.
MAIN MOTION ROLL CALL	On a roll call vote the motion passed unanimously.
PRELIMINARY PLAT/ NORTH SHORE RANCH (FPP 06-32)	A request by Kleinhans Farms Estates, LLC for Preliminary Plat approval of North Shore Ranch, a three-hundred-ten (310) lot single-family residential subdivision on 367.470 acres. All lots in the subdivision are proposed to have public water and sewer systems. The property is located off MT Highway 82 in Somers.
STAFF REPORT	Kirsten Holland reviewed Staff Report FPP-05-84 for the Board.
BOARD QUESTIONS	<p>Cross asked about the common boundary with the Wildlife Protection Area maintained by Fish, Wildlife and Parks.</p> <p>Holland pointed it out on the map.</p> <p>Hines asked about the timeline for this application and whether or not the Board could postpone it until the Growth Policy is adopted.</p> <p>Holland stated there is a timeline and we have to adhere to statutory deadlines.</p>
APPLICANT	Keith Simon, the applicant, stated they had done their homework for this subdivision. The applicants wanted to create a development where people could enjoy something valuable to this community, raise children where they would have fun growing up but also be in harmony with the delicate balance of nature. He stated they initially started this project with higher density, but once they started the project they had to maintain a balance of quality of cost and the quality of the subdivision. He said they hired their own biologist to study the wildlife habitat, and commented about the critical wetlands. He stated they will show why they are proposing the setbacks they have and why they don't need a larger setback. He commented they have a deep appreciation for wildlife, and as such, have created 8 miles of pedestrian trails separate from the equestrian system. They also have 6.1 miles of equestrian trails. There are 3 viewing platforms, which would allow people to enjoy the outdoors. The area will be fenced and they have conditions in the covenants specifically for the wildlife area. Homeowners will have to abide by the law and by covenants as well. He stated that the quality of life will be fantastic. He also stated the project is designed around the topography.

**APPLICANT
Continued...**

Eric Mulcahy, of Sands Surveying, had a PowerPoint presentation the he showed the Board. He introduced the team that worked on this project and stated what their roles had been. Mark Spratt from RLK Hydro provided groundwater analysis, Tom Power of Carver Engineering provided sewer and water analysis as well as the traffic study, Dr. Phil Elliot a biologist was the consultant who prepared the wildlife report, and Shawn Averill was the Real Estate consultant for this project. He spoke about the density, (310 lots on 367 acres), the equestrian and pedestrian trails, the landscaping, open space, and the wildlife. He commented about the setback on the boundary of the Wildlife Protection Area, and showed a map of that area. He stated they felt they had worked diligently to buffer the lots from the Wildlife Protection Area. He spoke of the existing subdivisions in the area and how this proposal will fit in nicely with those. He also spoke about other developments that have a boundary with the Wildlife Protection Area and how their proposal will have setbacks similar to those. He stated they can meet the 150 foot setback in most cases. He showed the property boundaries and spoke about the topography.

Shawn Averill spoke about the covenants and how they addressed the fish and game requirements. He stated they have three (3) separate plans within the covenants: Wildlife, vegetation, and horse and stable rules. He said the reason they separated the plans was because they wanted to ensure that the board could change those plans without the entire association voting.

Robertson asked about a leash law.

Averill stated there would be a leash law and if it's not in the covenants it would be.

Mulcahy spoke about the wildlife report and stated it was in response to the letters received from US Fish & Wildlife and Fish, Wildlife and Parks. He addressed the impacts to the endangered species and the species of concern. He commented that they addressed concerns and did a very thorough report mitigate impacts. He spoke of the hydrology report and stated Mark Spratt, from RLK Hydro, was available to answer any questions they might have. He spoke about the groundwater issues and stated the hydrologists drilled nine (9) test holes on this site, monitored them and they are finding the water is traveling from the south to the north, off of the site; this helped them design their drainage system and the analysis for their drinking water. He also spoke about the traffic impact study, and stated they had met with the local Montana Department of Transportation office and learned of their plans on Highway 82 in front of the property.

Dziza asked about the groundwater testing and the results.

Hines asked about the erosion of the lake.

**APPLICANT
Continued...**

Simon stated they met with Yellow Bay, who commented that the erosion is happening near where the river enters the lake, not where this property is.

Cross asked about the easements.

Simon pointed the area out on the map and stated why they designed the area to be a permanent conservation area and open space. He showed the critical area and the wetlands they will protect.

Dziza asked about the groundwater monitoring.

Spratt stated they are continuing to monitor groundwater and will until late fall. He stated the groundwater levels are going down and are continuing to do so. It appears the system recharges from snow melt. So far there is absolutely no connection to the lake as was thought for many years.

AGENCIES

Brandi Eaton, 667 Somers Rd, of Somers Water and Sewer District, read a letter she submitted for the Board. In this letter, she stated the developer had an agreement to be served by the Lakeside Sewer District. She is concerned about how this could affect the water supply for her District. She stated in order for Lakeside to serve this property, they will have to install an eight inch force-main from north Somers Rd. south across the highway to Somers Rd. and then east along the highway. She stated these lines will cross a small portion of the Somers District boundary. She said although there is no law against this unless they annex said lines into their District, Somers Water and Sewer does object to this. She commented that if Lakeside would have honored Somers repeated requests to negotiate for additional capacity in the last several years, Somers would also have been able to serve sewer to this development and to other developments within the existing district. She spoke about the groundwater and her concerns regarding the animals.

Lynn Verlanic, of US Fish and Wildlife Service, spoke about the letter she had submitted. They think this development will decrease the existence of waterfowl, eagle, osprey and grassland bird nesting and nest success. They urge the Board to postpone this proposal until the new Growth Policy is adopted and they have wildlife habitat identified and mapped. This is an important wildlife area and an important resource. She stated the main concern is the wildlife and the wildlife report stated the wildlife in the area are adapted to high levels of human activity. US Fish & Wildlife disagreed with that as these species don't adapt well. She referenced the report and how the agency disagreed with a lot of it. She spoke about how bald eagles are protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. She spoke of the buffer and the fines involved if the developer violates the law. She stated Fish & Wildlife

**AGENCIES
CONTINUED...**

has had problems with covenants within developments and said the agency does not have the resources to enforce the regulations. They strongly oppose this subdivision and don't feel the agencies concerns were addressed. They do support Fish, Wildlife & Parks letters and the Flathead Lakers letter as well. They have issues with the buffer zone, and would recommend more of a buffer. The proposed 150 foot buffer is not enough. They have concerns with the wildlife report and stated the agency does not have the resources to do what the report states. The trespass issue was addressed but the agency does not have the resources to enforce the regulations.

Dziza asked about the eagles nest locations.

Verlanic pointed it out on the map and stated there are several nests in the area.

Cross asked if she had any comment about the 300 foot no build zone.

Verlanic stated they strongly disagreed; a 500 foot buffer would be better. She said if this proposal were approved tonight, they would have to deal with it, but there will be a lot of disturbance to the wildlife in the area.

**PUBLIC
COMMENT**

Henry Oldenburg, lives in Holt, stated he wanted to address some facts. He wanted to address the trespass issue, clay-lens, and protection of the existing Wildlife Protection Area. He spoke about the clay-lens and how it prevents the penetration of surface water. He stated it could create monumental problems. He spoke about the protection of wildlife and the covenants. He said he has had a problem with trespassers and it is difficult to enforce. He wanted to impress upon the Board that he loves this valley and the wildlife and urged them to give his suggestions the very best consideration.

Mike Meschke, a registered sanitarian, spoke about the plan for the proposal in regards to the hydrologist report. He spoke about the groundwater issues and the lake. He handed a letter to the Board and stated he outlined 10 items to go over. He touched briefly on the issues he had concerns with. He stated almost a third of the property is in the one-hundred year floodplain. Because of that, he stated the 310 lots would be on approximately 270 acres. He spoke about shallow groundwater, the Wildlife Protection Area, problems with wastewater lines constructed below the water table and overloading of lift stations during periods of prolonged wetness, mold and poorly drained foundations, wetlands and low-lying topography, the storm-water management plan, code enforcement, and construction debris. He also spoke about standing water in the area and the mosquito complaints the County will get because of that.

**PUBLIC
COMMENT
CONTINUED...**

Allison McCarthy, 551 N Juniper Bay Road in Somers, asked the Board to deny this proposal. She referenced the developments currently under consideration: Cooper Farms which would be approximately 700 units, North Shore Ranch which is 310 units, and Meadowbrooke Place which is 171 units. She stated those developments would increase the units in Somers by 450%. She asked the Board to consider that the Growth Policy recognizes this area as a gateway area to the valley. She said unrestricted development can negatively impact important scenic resources. She stated it is important to develop minimal land use guidance that ensures the preservation of resources. She stated the first element is to protect the views. She also stated some development may be appropriate, but the density of overall development needs to be controlled. The third item is to please listen to the wildlife experts because the biggest threat to fish and wildlife is habitat loss and the agencies are responsible for the management of fish and wildlife populations. She asked the Board to please consider denying this proposal until the Growth Policy is in place and Fish, Wildlife, & Parks has the opportunity to analyze the impacts to wildlife that depends on the north shore of Flathead Lake.

Dan Casey, 265 Lindsey Point, spoke about the natural resources. He stated he is a professional wildlife biologist and waterfowl hunter who has spent more than two decades studying and watching wildlife on the north shore of Flathead Lake. He said he worked for Fish, Wildlife, and Parks, twenty years ago and studied the importance of the north shore to waterfowl, shorebirds, osprey and bald eagles. He stated this area was and continues to be one of the most important wetland areas for species in the valley. He said this is due to the protection offered by its designation as a federal Waterfowl Production Area and also because of the undeveloped nature of adjoining lands and the additional buffer they provide. He spoke about this area as being a priority for protection and asked the Board to deny this proposal. He said the extraordinary density of development, immediately adjacent to public wildlife lands and critical wetlands, would have profound effects on recreational opportunity, water quality, wildlife populations, and quality of life in the surrounding community.

Ray Washtak, 132 Bison Range Road, of Fish & Wildlife Service, stated waterfowl production areas are an entity of the National Wildlife Refuge System. This system is a series of land across the country, which consists of over 550 units in all states including Puerto Rico and Guam. This system is actually larger than the National Park system and has more acreage under management and more units than the National Parks system. He thought the Board and the public would be interested in knowing that fact.

Peggy Hedin, 206 Westridge Dr, spoke about the open areas around the lake and the wildlife. She stated development is irreversible and talked about light pollution and noise pollution. She stated the noise

**PUBLIC
COMMENT
CONTINUED...**

would be very disruptive to the Eagles and other habitat in the area. She also spoke about the covenants and how they would not be able to be enforced. She pointed out that the protection of these areas is the primary goal of the new Growth Policy and urged the board to hold decisions until that policy is adopted. She also spoke about the views.

Don Bofman, 10 Somers Road, spoke about the Growth Policy and high density development. He commented about the gateways to the community and wanted the Board to give this some consideration. He spoke about the wetlands in the area as well.

Mike O'Brien, 215 Westridge Drive, agreed with previous speakers about following the program and establishing a program on building and what's going on. He disagreed with the fact there is building going on now and proposed that will interfere with all of these things. He agreed with the opposition.

Robin Steinkraus, representing the Flathead Lakers, spoke about the north shore area of Flathead Lake. She urged the board to deny this proposal due to shallow aquifer, impacts to water fowl, eagles, and other wildlife. She stated the state has declared the lake an impaired water body and because of that it has to have a total maximum daily load study done for it. She stated the Department of Environmental Quality has determined at least 15% reduction nutrient solution is needed to ensure that Flathead Lake remains clean. She is concerned with groundwater, and spoke about a study to identify maintaining water quality. She referenced the Growth Policy and spoke about the concerns of the Flathead Lakers in regard to the density and the shallow depth of groundwater. She said until the risks to the aquifer and lake have been fully evaluated, and effective methods to mitigate then have been determined, the level of density proposed is unacceptable at this location. She asked, on behalf of the Flathead Lakers, the Board recommend denial for this proposal and the County develop a comprehensive plan for the lower valley area that protects its unique wildlife, recreational, scenic, and quality of life values. They further recommended a hydrology study and the nutrient loading study be completed in coordination with the University of Montana Flathead Lake Biological Station before considering approval of development proposals with a density greater than one lot per 20 acres in the north shore area. She stated a more thorough analysis of the impacts of development on various sensitive wildlife species be completed prior to considering for approval development in this area. They also recommend the County require a thorough review and analysis of the cumulative impacts of development on water quality, wildlife habitat, and wildlife use in the north shore area prior to getting approval. They would also like for the Growth Policy be completed to use as an implementation tool for north shore wetlands, shallow groundwater, and wildlife habitat prior to approval of proposals in the north shore area.

**PUBLIC
COMMENT
CONTINUED...**

Kathryn Maxwell, a resident of Somers, commented about the wildlife. She spoke about the density and how it is an inappropriate use of the agricultural land. She stated the development has to comply with the existing Growth Policy and the existing Subdivision Regulations. She spoke about the flood hazard on parts of this proposal and she spoke about the Environmental Assessment. She stated it does not address the agricultural use or the timber production for this area.

They are concerned about the equestrian part of the development and the waste and how it will be dealt with. She stated this area is agricultural farm land, referencing the Growth Policy and the Staff report, stating that it doesn't adequately address this situation. She talked about the sewer and how it could join an existing sewer. She spoke about wildlife and water fowl areas and her concern with disturbing these areas. She stated this proposal will substantially change the character of the area, and will increase the demand for more development. She said the applicant has failed to meet the burden of proving a benefit to the public interest, and the Staff Report fails to meet the Flathead County Subdivision requirements that findings be issued demonstrating conformance with the Growth Policy.

Fran Ruby, 85 Spring Creek Road, commented about the shoreline on the north shore and the horses harming this shoreline. She urged the board to deny this project.

Asta Bowen, 234 Old Highway 93, spoke about runoff and the fact that people still use the lake as drinking water. She is concerned about water quality of the lake and urged the board to use extraordinary measures for this lake.

Dan Bangeman, 543 N Juniper Bay Road, spoke about the money that was talked about being donated to the local community in the application. He wanted to know where the money would come from to pay for the schools, the fire dept, and the parks.

Harry Woll, 3707 Lower Valley Road, commented about the fragile ground in that area. He farms in the area and spoke about the groundwater issues. He stated he doesn't trust the data from the monitoring system, he trusts the people that live in that area. He would like the Board to make sure of their decision on what is being presented.

Sharon Treweek, 682 Highway 82, is concerned about the water and sewer. She stated this will create a problem for her as she will have Somers Water and Sewer to the south of her, the private water system from this development to the east of her, and north of her she would have Lakeside septic, with the possibility of not being able to get service from any of those. She encouraged the Board to have Somers Water and Sewer and Lakeside Water and Sewer and this development work together to have a better plan for water and sewer to this property

**PUBLIC
COMMENT
CONTINUED...**

that would include those in that area.

Roger Sullivan, 324 Boon Road, agreed with comments already made. He stated the Master Plan is important when considering subdivision proposals. He stated these proposals have to comply with the existing Master Plan and said this proposal is in gross violation of that plan. He spoke of the density and pointed out the subdivision requires water and sewer. He commented about the letters submitted by the sewer districts and stated these are not 'will serve' letters. He read from the letter submitted by Brandi Eaton, and stated Lakeside does not have the capacity to serve this area. He spoke of the feud between Somers and Lakeside in regards to who will be able to serve these new proposals, and asked the Board to recommend denial this proposal. He commented about the public not being able to get information due to a lot of new data being turned in at the eleventh hour. He does not want the Board to make a decision based on hearsay.

Mayre Flowers, of Citizens for a Better Flathead, 35 4th St West, and with 1400 members throughout the valley, spoke about factual records. She handed out policies and goals from the 1987 Growth Policy and stated the Board needs to make sure this proposal complies with that document. She spoke about transfer development rights and stated that she encourages it. She submitted a report from Kelley Appraisal that stated the valley has 20,000 undeveloped subdivided lots in Flathead County and said it would be really hard to overcome and demonstrate a need on prime farmland, sensitive, and critical wildlife habitat area, that we need to provide additional housing in Flathead Valley. She also submitted a soils report to confirm these are agricultural soils. She spoke about the intrusion to the aquifer and the wildlife habitat.

Susannah Casey, 265 Breezy Point, spoke about the covenant enforcement and how it will be impossible to enforce. She also spoke about the groundwater and habitat loss. She stated it is critical wildlife habitat and should be protected.

**STAFF
REBUTTAL**

Holland clarified Bissell's statements left in a phone message that afternoon, and stated 14 letters have been received since the staff report was written; 2 in response to the Fish & Wildlife report.

**APPLICANT
REBUTTAL**

Kent Saxby represented the applicant. He spoke about the water and sewer availability and the buffer zones. He stated this is a quality development and we should appreciate it. Growth is inevitable and we need to plan for it. He spoke of the concerns of Fish, Wildlife & Parks and pointed out their jurisdiction stops at their property line. This development will have an exterior fence all around it and will help reduce trespassing. He commented about the concerns of disturbing wildlife and the impacts. He spoke of the Somers and Lakeside Water and Sewer Districts and the capacity. He also spoke of the floodplain

areas and the use of pesticides and herbicides and stated farmers have used them in the past. He spoke of the covenants as well, and stated the majority of speakers tonight were from Somers and are opposed to change. He stated Staff recommended approval and the Board needs to follow that recommendation unless they find valid signs of concern that can not be addressed by appropriate conditions. They feel there are appropriate conditions and they are not opposed to them. He asked the Board to approve this application.

MAIN MOTION

Fleming made a motion seconded by Robertson to adopt Staff Report FPP 06-32 as findings of fact and recommended **denial** to the Board of County Commissioners.

BOARD DISCUSSION

Fleming asked about revising staff reports.

Holland clarified.

Fleming had several issues with general health and welfare. She spoke of the covenants and agrees with the majority of the public in regards to enforcement of those covenants in regards to protecting the wildlife. She had an issue with the number of entrances onto Highway 82. She commented that the report stated this proposal is close to amenities and stated there is only a small convenience store across Highway 93 which is a dangerous area. She wanted to recognize the comments submitted by Fish, Wildlife & Parks and the US Fish & Wildlife concerning density and intrusion to the wildlife habitat. She is concerned about the groundwater and the building up of foundations and roads. That is a red flag to her. She stated the shallow aquifer has some pollution and since this will be an equestrian center, that would add to the pollution. She doesn't know how you keep people from building in the floodplain, and the County has enough problems with violators. This is so unlike anything around there and she feels they could have come in with a lot less homes in that area.

Robertson stated that any lot with more than one (1) acre can have horses and she pointed out on the map all the lots that were within the floodplain that are more than one (1) acre and can have horses. She also spoke about domestic animals, fertilizer, bug spray, and how it could affect the lake. She figured there would be one million nine-hundred-nine thousand six-hundred gallons of wastewater each month. She commented that half of this development would go to Bigfork School District and the other half would go to Kalispell School District, which is bad enough, but there is no bus service from Bigfork to this area so those children would have to figure out some way to get there or pay tuition to attend Kalispell Schools. She stated that the ball fields are in sensitive areas and she is concerned with disturbance of the wildlife. She also commented about the possible farming of this area in the past, and how the public comments have further cemented her opinion that this proposal is not appropriate for this area.

**BOARD
DISCUSSION
CONTINUED...**

Cross pointed out this is obviously an environmentally sensitive parcel and not suitable for this density. He stated there are other concerns and the letter from MDT is going to mean there has to be a redesign. He spoke about the sewer and water issue as well and said it presents a real problem. He commented about the horses and how many would be in this area. He also stated he wanted to make sure the other concerns were out there for the Board to discuss.

Lapp stated this proposal is next to sewer and water and he doesn't feel there is any argument from anybody that this property needs to be handled by a sewer and water district. He feels there needs to be some trade-off in the community for density issues in order to be able to handle bringing the sewer and water over there. He is concerned about the size of the lots and having horses on them. He doesn't feel the lots are large enough for horses. He feels there is an inconsistency with the comments about fertilizer herbicides, stating that agricultural land uses a tremendous amount of fertilizer herbicides on the ground. He spoke of the aquifer and how it could take a while for any contaminates to get into the aquifer. He thinks it is not all bad and he feels a lot of stuff can be mitigated. He feels this comes down to the appropriateness of this project in this location.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Fleming stated the reasons for denial which included traffic from three driveways, the increased traffic pouring out onto the uncontrolled intersection of Highway 93, the closeness of the subdivision to the WPA and the damage that could come to that due to trespassers, pollution, the increased traffic due to commuters, and groundwater/runoff issues.

Robertson also stated some reasons for denial, which included the possibility of unrestricted household pets, different schools, everything that came from Fish, Wildlife and Parks, and the public comment in general which included water pollution, threat to the wildlife and the quality of the lake.

Dziza spoke about the hunting area being adjacent to the WPA and stated he doesn't feel this is the best place to position an equestrian center. He also stated it would be very difficult to enforce covenants.

Hines spoke about the continuing saga of the "turf war" between Somers and Lakeside Water and Sewer Districts. He stated that needs to get put together and everybody needs to work on the same page. He said it's not healthy for the community or the developers.

Toavs feels the 150 foot buffer should be a minimum. He agrees with the members of the Board and stated he would like to see the Fire

**BOARD
DISCUSSION
CONTINUED...**

Department agreement be above and beyond the regular requirement and not replace the standard conditions. He also referenced the Traffic Study and would like to follow the agency comments in regards to their requirements.

Lapp stated he doesn't feel this is an appropriate location.

**ZONE CHANGE/
FARLEY ET AL
(FZC 06-14)**

A Zone Change request in the Lower Side Zoning District by Mitchell and Sandra Diede, Ronald and Mary Farley, John and Vicki Bruff, Daniel and Kristine Burrows, Robert Hoback and Ashley Creek Stables, LLC, from SAG-10 (Suburban Agricultural, 10 acres) to SAG-5 (Suburban Agricultural, 5 acres). The properties are located at 2635 Airport Road, 2691 Airport Road, 2589 Airport Road, 2601 Airport Road, 2615 Airport Road, and 2621 Airport Road respectively. The total acreage for the above mentioned properties is 73 acres.

STAFF REPORT

Rebecca Shaw reviewed Staff Report FZC 06-14 for the Board.

APPLICANT

None.

AGENCIES

None.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

None.

**APPLICANT
REBUTTAL**

None.

MAIN MOTION

Hines made a motion seconded by Robertson to adopt Staff Report FZC 06-14 as findings of fact and recommended approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Cross commended the applicants for putting together a bigger parcel; it makes sense.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion passed unanimously.

**PRELIMINARY
PLAT/OLD
STONE
SUBDIVISION
FPP 06-30**

A request by Mike and Sharon Wymer for Preliminary Plat approval of the Amended Plat of Lot 3, Old Stone subdivision, a two (2) lot single-family residential subdivision on 7.35 acres. All lots in the subdivision are proposed to have individual water and septic systems. The property is located at 205 Evers Creek Road.

STAFF REPORT	Rebecca Shaw reviewed Staff Report FPP-06-30 for the Board.
BOARD QUESTIONS	<p>Robertson asked if the home was already built.</p> <p>Kaufman stated the home is completed and has an address. The Mother of the applicant is living in this home.</p> <p>Fleming asked Staff how they can put two (2) homes on a subdivided lot.</p> <p>Holland stated it is unzoned and they could always call it a guest house until it actually is a separate residence, as long as it's two bedrooms or less; the County does not regulate it. Also, if the subdivision covenants don't prohibit it, there is not much the County can do. She stated the applicant could not have two houses with two separate titles because it's one piece of land. But they could build two and rent one out in an unzoned area. She said apparently that is quite prevalent out there from what she has learned.</p> <p>Fleming asked about dividing the land further. She stated she remembered a subdivision close to this one that did the same thing.</p>
APPLICANT	<p>Joe Kaufman, of Big Sky Surveying, represented the applicant. He stated this does have two existing DEQ approvals. They are fine with all the conditions.</p> <p>Cross asked if there were any covenants or conditions that restricted further subdivision.</p> <p>Kaufman stated no; only a road maintenance agreement they submitted with the application.</p>
AGENCIES	None.
PUBLIC COMMENT	None.
STAFF REBUTTAL	None.
APPLICANT REBUTTAL	None.
MAIN MOTION	Fleming made a motion seconded by Robertson to adopt Staff Report FPP 06-30 as findings of fact as amended and recommended approval to the Board of County Commissioners.
BOARD DISCUSSION	Toavs asked if there should be a condition stating there can be no further subdivision of this property.

Robertson felt there was no room with where the houses and the drain-fields located where they are.

Toavs said in his opinion, if the applicants leave, they can sell the lot.

**MOTION
Condition #13**

Toavs made a motion seconded by Robertson to add condition #13 to state the lots can not be further subdivided.

**BOARD
DISCUSSION**

Lapp stated he is okay with the motion. He stated he has been involved with signing waivers and things like that; in this case they do a subdivision and sell to somebody else, through the whole subdivision process, part of the property rights have been dealt with or given away in the process. So if you buy a lot in the subdivision, you don't have every property right from a piece of property that has been established since statehood or something like that. He said he understands that more and more and said that was a very common thing ten years ago.

**ROLL CALL
Condition #13**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion failed 3-3 with Cross, Toavs, and Fleming dissenting.

**SUBSIDIARY
MOTION**

Toavs made a motion seconded by Cross to adopt Staff Report FPP-06-30 as findings of fact and recommended denial to the Board of County Commissioners.

**BOARD
DISCUSSION**

Fleming stated another Board member had made a very good point. She stated if it truly was a guest house they wouldn't be coming in. She is always a little bit suspicious.

**ROLL CALL
SUBSIDIARY
MOTION**

On a roll call vote the motion failed 3-3 with Dziza, Lapp, and Robertson dissenting.

**ZONE CHANGE/
WELSH
(FZC 06-07)**

A Zone Change request in the Evergreen and Vicinity Zoning District, by Heidi Welsh from SAG-10 (Suburban Agricultural, 10 acres), to SAG-5 (Suburban Agricultural, 5 acres). The property is located at 1015 Birch Grove Road, and contains 14.83 acres.

STAFF REPORT

Rebecca Shaw reviewed Staff Report FZC 06-07 for the Board.

**BOARD
QUESTIONS**

Lapp asked if there was any means of variance within a zoning district to do a variance rather than a zone change.

Holland replied there have been a couple situations where a landowner has requested a variance to minimum lot size. She stated the Board of Adjustment has been extremely careful in making sure that when they grant those requests for a variance, that there are unique

circumstances. She cited several examples. She stated there is a provision for it, but you have to prove a hardship.

Robertson asked if all the lots surrounding this parcel were zoned for ten acres.

Shaw replied yes, they were created through exemption prior to zoning. They are mostly five acre parcels.

Robertson asked why the applicants wouldn't have the other residents, within Center's Ranchettes, apply for a zone change for the whole area rather than this type of spot zoning, which it appears to be. She stated it would be more logical.

APPLICANT

Heidi Welsh, Rapid City South Dakota, said the letter she sent was to clarify that they wanted this zone change to better manage their fifteen acre parcel. She stated because of the surrounding properties being five acre parcels, they were not requesting anything out of the ordinary.

AGENCIES

None.

**PUBLIC
COMMENT**

Susan Hagar, 929 Birch Grove Road, said she and her husband are opposed to this zone change, and referenced her letter sent to the board.

**STAFF
REBUTTAL**

None.

**APPLICANT
REBUTTAL**

None.

MAIN MOTION

Cross made a motion seconded by Fleming to adopt Staff Report FZC 06-07 as findings of fact and recommended denial to the Board of County Commissioners.

**BOARD
DISCUSSION**

Cross stated he had a problem with putting a SAG-5 in the middle of a SAG-10 area. He said if in fact there was a legitimate case, Staff should encourage the applicants to get together with their neighbors and create a larger zone that would make sense based on existing parcels. He stated this does create spot zoning. He said it doesn't make any sense to have a sea of SAG-10 around this little island of SAG-5, just to accommodate one persons desire to sell off part of their acreage.

Lapp said there are seventy-seven (77) parcels, five acres or smaller on the map. That doesn't even include parcels on the map that go down into the AG-20 and AG-80. He stated doing a zone change is not a good idea, and he is glad there is another route to go. In his opinion,

there are a bunch of people that move out there and have what they want and now they don't want anybody else to have that.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The Board discussed the reasons for denial, which was the fact that this is spot zoning.

Robertson stated there is a whole bunch of acreage zoned wrong. If it is five acre parcels, then let's have it zoned according to what is there. It makes no sense to have 20, 40, 60 acre zoning, when you have 5 acre houses.

Lapp agreed.

Holland stated there may be an opportunity through the new Growth Policy.

Shaw stated she and the applicants had figured 46% of the surrounding land is five acre parcels or less.

Holland added, for the applicants sake, when you have a lot of five acre parcels surrounding you, to go to them and ask them to go in on a zone change to SAG-5, you are adding acreage so you are raising the fee, the landowners have no interest to do that because they are already five acres. Unless there is some minor change in appraisal value, there is nothing in it for them. They are not going to be able to reconfigure their land so they are pretty apathetic towards that.

Robertson wanted the County to take the initiative to review the land out there and reassess how it is zoned and do it appropriately.

Hines stated they could do a neighborhood plan.

OLD BUSINESS

None.

NEW BUSINESS

Holland stated a letter had been sent by Jeff Larsen and she handed it out to the Board. She stated Larsen wanted the Board to discuss each item and make a motion on them.

Fleming stated she had talked to Larsen and he indicated that he wanted the Board members to have time to review the contents and discuss it at their next regular meeting.

Fleming commented that there is too much new information handed out the night of the meeting, and maybe the public could give it to Staff for the record.

Robertson stated most of the people that handed something to the Board actually read what they hand out.

Hines said by state statutes, the public can submit comments up until 5:00 p.m. the night of the meeting.

Holland clarified why the Board receives comments when they do.

Fleming said maybe the public can hand their comments to Staff at the beginning of the meeting, and the Board can take a few minutes to read the letters. Then the Board isn't trying to read those things while the public is talking.

Hines stated people purposefully wait until the night of the meeting giving them the potential to litigate. He stated we should check with the County Attorneys to see if we have to take new information the night of the meeting or not.

The Board and Staff discussed this issue further.

ADJOURNMENT

The meeting was adjourned at approximately 10:00 p.m. on a motion by Hines seconded by Robertson. The next meeting will be held at 6:00 p.m. pm August 9, 2006.

Jeff Larsen, President

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 8/16/06